

Decision 02-04-013 April 4, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into Competition For
Local Exchange Service.

Rulemaking 95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the
Commission's Own Motion into Competition For
Local Exchange Service.

Investigation 95-04-044
(Filed April 26, 1995)

OPINION ON REQUEST FOR INTERVENOR COMPENSATION

This decision awards The Utility Reform Network (TURN) \$ 17,340.33 in intervenor compensation for contributions to Decision (D.) 01-09-063.

1. Background

In D.01-09-063, we granted the Joint Motion for Adoption of the Proposed Settlement Agreement filed on May 19, 2000, relating to the recovery of Local Competition Implementation Costs for Verizon California, Inc. (Verizon).¹ As agreed among the parties to the Settlement,² we authorized Verizon to recover \$6 million per year over a two-year period beginning January 1, 2002.

¹ Verizon California, Inc. was previously known under the business name GTE California, Inc. (GTE) in earlier phases of this proceeding. All references in this decision to GTEC will use its current corporate name of Verizon.

² The parties to the settlement negotiations were TURN, AT&T Communications of California, Inc., MCI WorldCom and Verizon.

By a Request for Award of Compensation (Request) filed November 26, 2001, TURN presented a claim for its substantial contributions to D.01-09-063. No opposition was filed by any party.

2. Procedural Matters

Pursuant to Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is being waived.

3. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code Sections 1801-1812.³ In this context, an "intervenor" is a customer or customer's representative (*see* §§ 1801, 1982(b), and 1804(a)). This decision will use "intervenor" and "customer" interchangeably.

Section 1804(a)(1) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC) or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer's⁴ planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may also request a finding of eligibility.

³ Unless otherwise noted, all statutory citations are to the Pub. Util. Code.

⁴ To be eligible for compensation, an intervenor must be a "customer" as defined by § 1802(b). In D.98-04-059 (footnote 14) we affirmed our previously articulated interpretation that compensation be proffered only to customers whose participation arises directly from their interests as customers. (*See* D.88-12-034, D.92-04-051, and D.96-09-040.)

4. Requirements for Eligibility to Claim Compensation

TURN was previously found eligible for compensation in an earlier phase of this proceeding. Pursuant to Rule 76.76, TURN remains eligible for compensation for its participation in later phases of this same proceeding. Section 1804(c) requires an eligible customer to file a request for an award within 60 days of the issuance of a final order or decision by the Commission in the proceeding. Within the 60 days allowed following issuance of D.01-09-063, TURN timely filed its Request.

5. Contribution to Resolution of Issues

Section 1804(e) requires the Commission to issue a decision which determines whether or not the customer has made a “substantial contribution” and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

An intervenor requesting compensation must provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.” Section 1802(h) states that “substantial contribution” means that, “in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s

fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.”

TURN describes the contributions that it made to D. 01-09-063 in which we approved a settlement providing for the recovery of \$12 million by Verizon to compensate for its costs incurred in implementation of local competition. The issues resolved by the settlement covered: (1) the reasonableness of Verizon’s implementation costs; (2) the recovery mechanism; and (3) the scope of permissible recovery of implementation costs. As noted below, we concur that TURN made a substantial contribution to our decision on these issues.

TURN played an active role in negotiating the settlement ultimately adopted by the Commission. The overall outcome reached in the settlement reflects efforts by TURN to limit the amount and terms of cost recovery that Verizon could collect from ratepayers. In D.01-09-063, the Commission determined that Verizon should recover only \$12 million, which is more than 25% below the principal and interest that Verizon initially sought to recover. TURN also performed document review of the complex records underlying Verizon’s claimed costs and recovery proposal. TURN helped in ensuring that the proposed settlement was consistent with the information provided through extensive discovery.

We find that TURN’s thorough examination of documents and active role in settlement negotiations was instrumental in leading Verizon to agree to reduce its initially requested recovery of expenses by more than 25%. We thus conclude that TURN has made a substantial contribution to D.01-09-063, as prescribed in § 1802.

6. Customer Interests Represented

In a decision in which we generically reviewed many of our policies on intervenor compensation, we directed that an NOI contain information to enable the presiding officer to preliminarily assess whether an intervenor will represent customer interests that would otherwise be underrepresented. Additional assessment of this issue is to occur in response to any request for compensation. If the intervenor is a “customer” who represents interests that would otherwise be underrepresented, and who meets the significant financial hardship criteria, the intervenor may be eligible for an award of compensation. (D.98-04-049, pp. 27-28, Finding of Fact 13.) TURN submits that it represented the interests of residential and small business customers that would otherwise have been underrepresented. We concur with TURN. Although ORA also represented ratepayers in this proceeding, ORA opposed the settlement supported by TURN.

7. Duplication of Effort

The intervenor compensation statutes intend that the program be administered in a manner that avoids “unnecessary participation that duplicates the participation of similar interests.” (Section 1801.3(f).) The governing statutes envision some participation that is duplicative may still make a substantial contribution and therefore be compensable. (*See* D.98-04-059, p. 49.) In previous matters in this docket in which TURN has participated jointly with the competitive local carriers (CLCs), the Commission has on occasion discounted TURN's award by 10% because of duplication. (*See, e.g.*, D.96-11-020.) We agree with TURN that in this phase of the proceeding, however, no duplication discount is justified.

The work performed by TURN in this phase of the proceeding is similar to that performed in connection with implementation cost recovery for Pacific in

D.01-07-020. In that decision, we awarded intervenor compensation to TURN for its work in connection with the settlement relating to Pacific's local competition implementation cost recovery, and concluded that no discount for duplicative effort was warranted. In that proceeding, we determined that TURN had taken a lead role, and had engaged in extensive discovery efforts that did not duplicate the efforts of other parties.

TURN concedes that it is less clear that there was *any* duplication of effort with regard to its work on the Verizon implementation cost settlement. Nonetheless, TURN argues that, consistent with the Commission's findings regarding the Pacific settlement of implementation cost recovery, likewise no discount for duplication of effort is appropriate in this instance, either.

To the extent that there was any duplication of effort between TURN and any other party in this phase, we conclude that the duplication was minimal and falls within the category of participation that materially supplements the presentation of another party and is thus compensable under § 1802.5.

8. Benefits to Ratepayers

In D.98-04-059, Finding of Fact 42, we indicated that compensation for a customer's participation should be in proportion to the benefit ratepayers receive as a result of that participation. An assessment of whether the requested compensation is in proportion to the benefits achieved helps ensure that ratepayers receive value from compensated intervention, and that only reasonable costs are compensated. (*Id.*, p. 73.)

As a result of the settlement adopted in D.01-09-063, Verizon will recover \$12 million over a two-year period. This amount represents a reduction of more than 25% from the amount that Verizon initially sought to recover. An award to TURN of \$ 17,340.33 for its efforts to achieve this reduction is reasonable.

9. Reasonableness of Requested Compensation

TURN requests compensation of \$17,340.33, comprised of the following elements:

Description of Item

Advocates Fees

<u>Name of Participant</u>	<u>Time Claimed</u>	<u>Hourly Rate</u>	<u>Compensation Claimed</u>
T. Long	1.25 hours	\$260/hr. (1998)	\$ 325.00
	25.25 hours	\$300/hr. (2000)	\$7,575.00
E. Kientzle	28.5 hours	\$180/hr.	\$5,130.00
R. Costa	7.25 hours	\$180/hr.	\$1,305.00
J. Anthony	6.5 hours	\$190/hr.	\$1,235.00
C. Mailloux	10.25 hours	\$95/hr. ⁵	\$ 973.00
R. Finkelstein	4.5 hours	\$140/hr. ⁶	\$ 630.00
<u>Other Costs</u>			
Photocopies			\$ 121.00
Postage			\$ 45.00
Total Compensation Claimed			<u>\$17,340.33</u>

A. Hours Claimed

TURN has segregated its hours by activity in accordance with Commission guidelines. When possible, TURN has assigned time to specific issues. The time devoted to preparation of the intervenor compensation request

⁵ The otherwise compensable hourly rate has been discounted by 50% to reflect the fact that the chargeable time was spent preparing the compensation request, consistent with prior practice.

is charged at one half of the otherwise compensable hourly rate. This is consistent with our direction in D.98-04-059. We conclude that the hours billed by TURN are reasonable and compensable at the rates we approve below.

B. Hourly Rates

The per-hour compensation rate allowed for agents and employees of an intervenor must take into consideration the market rates paid to persons of comparable training and experience who offer similar services (Sec. 1806). Moreover, hourly fees allowed should consider not just the level of experience of the employee, but also the level of expertise that is appropriate for the task performed. The burden of proof in a compensation request lies with the party seeking compensation (*see* D.94-09-059). Whenever appropriate, we use rates previously approved by the Commission for the work of attorneys, expert witnesses, and staff members that performed work on behalf of the intervenor requesting compensation.

TURN seeks the following hourly rates for Thomas Long: \$260 for work performed in 1998; and \$300 for work performed in 2000. We previously approved an hourly rate for Long of \$260 per hour for 1998, adopted in D.99-07-045, and an hourly rate of \$300 per hour for 2000, adopted in D.01-07-020. Since TURN has requested compensation for Long's time based on hourly rates we have previously found reasonable, we conclude it is reasonable to apply these rates here in computing the allowed compensation award for 1998 and 2000.

⁶ *Id.*

TURN requests an hourly rate of \$180 for work performed by independent consultant Kientzle. In conjunction with Thomas Long, Elizabeth Kientzle was responsible for TURN's efforts on the Verizon issues on implementation cost recovery. The \$180 rate for Kientzle reflects the same hourly rate that we previously approved for her work in D.01-07-020, we shall apply the same rate here for work performed by Kientzle in this proceeding.

TURN also proposes an hourly rate of \$180 for work performed during 2001 by Regina Costa, TURN's Telecommunications Research Director. The \$180 rate represents an increase of 12.5% over the \$160 base rate most recently approved for Costa's work, covering the year 2000. (*See* D.01-08-011.) The \$160 rate approved for Costa for the year 2000 reflected the first increase that had been sought for Costa's work since 1996. The \$180 rate requested for 2001 represents a 29% increase over the 1996 rate, or an average increase of approximately 6% per year.

TURN presents a summary of the experience and educational background of Costa, arguing that the requested \$180 hourly rate is well below the market rate for consultants and experts with her experience and qualifications. Costa has worked in the telecommunications field in varied capacities since 1984, and has an advanced academic degree in telecommunications. As a reference for comparison, the \$180 hourly rate was previously approved for Elizabeth Kientzle in an intervenor compensation award to TURN in D.01-07-020. Yet, Kientzle has less experience than Costa, and lacks the specialized academic degree in telecommunications held by Costa. We agree that based on the comparison with Kientzle, an hourly rate of \$180 for Costa certainly does not exceed the market rate for experts with comparable

experience and qualifications. It is therefore reasonable to apply the \$180 rate for work performed by Costa in this proceeding.

TURN also seeks compensation for the work of James Anthony, a recently-hired Telecommunications Attorney at the hourly rate of \$190 for 2001. TURN asserts that this rate is reasonable in view of Anthony's past experience and qualifications. TURN compares the experience of Anthony with that of another TURN staff member, Paul Stein, for whom TURN was awarded an hourly rate of \$170 for his first year on TURN's staff in D.98-08-016. Allowing for the effects of inflation between 1998 and 2001, TURN computes that a rate of just over \$180 would be comparable to Stein's earlier rate. Yet, in light of Anthony's more extensive telecommunications-related experience, TURN argues that a slightly higher rate is justified. Therefore, TURN has requested an hourly rate of \$190 for Anthony. We find that the rate of \$190 for the work performed by Anthony in 2001 in this proceeding is reasonable.

C. Compensation for Preparing the Compensation Request

In numerous prior decisions, we have held that compensation requests are essentially bills for services, and do not require a lawyer's skill to prepare. Accordingly, in prior decisions, we have reduced by one half the attorney's rates applied to time spent preparing the compensation request, except in cases where the compensation claim involves technical and legal analysis deserving of compensation at higher rates.⁷ We upheld this practice in D.98-04-059 in which we established rules for intervenor compensation.

⁷ See for example D.96-08-023, D.97-02-047, and D.97-02-048.

In keeping with the requirement that preparation of the compensation request is applied at one-half the otherwise compensable rate, TURN has computed its costs charged to this function at the rate of one-half of \$190 (or \$95 per hour) for Christine Mailloux (*i.e.*, 50% * \$190= \$95). TURN seeks compensation for time spent preparing its compensation request based on a fully compensable rate of \$190 per hour claimed for Mailloux. TURN limited its requested hourly rate to \$190 per hour on the basis that Mailloux's work in this proceeding was limited to preparation of TURN's request for compensation. TURN reserves the right to seek a higher for Mailloux's work performed during 2001 on more substantive issues. We shall accordingly grant TURN's request for a compensable rate of \$190 for Mailloux.

TURN requests a rate of \$280 per hour for the work of Finkelstein for work performed during 2000. We approved this rate previously for Finkelstein in D.00-11-002. Thus, it is reasonable to apply that same rate for compensation here. As with Mailloux, the hourly rate for Finkelstein has been discounted by 50% to recognize that the chargeable time was limited to preparing the compensation request.

D. Other Costs

TURN requests \$ 166.58 for miscellaneous expenses. The expenses are for photocopying and for postage. We conclude that the expenses are reasonable in relation to TURN's total claim and fully compensable.

10. Award Granted

We award \$17,340.33 to TURN for its contribution to D.01-09-063. The award is calculated as follows:

Advocate Fees	\$17,173.75
Other Costs	\$ 166.58

Total Compensation Award \$17,340.33

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after TURN filed its compensation request and continuing until full payment is made.

As in all intervenor compensation decisions we put TURN on notice that the Commission's staff may audit TURN records related to this award. Thus, TURN must make and retain adequate accounting and other documentation to support its claim for intervenor compensation. TURN's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation is claimed.

11. Payment of Award

In D.00-01-020, we addressed the issue of the payment of intervenor compensation awards in quasi-legislative proceedings affecting an industry or multiple industries. We stated our intent that no later than July 1, 2001, awards in quasi-legislative rulemaking proceedings where no specific respondents are named will be paid from an intervenor compensation program fund. The details of this funding method are set forth in D.00-01-020.

This proceeding is quasi-legislative in nature and affects an industry. There is no named respondent. Accordingly the award to TURN shall be paid from the intervenor compensation program fund under the terms ordered below.

Findings of Fact

1. TURN has previously been found eligible for compensation in this proceeding.

2. TURN has made a timely request for compensation for its contributions to D.01-09-063.

3. TURN made substantial contributions to D.01-09-063.

4. TURN represented customer interests that would otherwise have been underrepresented. Any duplication of effort between TURN and any other party in this phase was minimal and does not warrant a reduction in the amount of the award.

5. The benefits to customers of TURN's participation outweigh the costs of funding TURN's participation.

6. The hourly rates requested for work performed by Long, Costa, Anthony, Mailloux, Finkelstein, and Kientzle are consistent with market rates and are reasonable.

7. The miscellaneous other costs incurred by TURN in this proceeding are reasonable and fully compensable.

8. This proceeding is a quasi-legislative proceeding that affects an industry. There is no named respondent.

Conclusions of Law

1. TURN has fulfilled the requirements of Public Utilities Code Sections 1801-1812, which govern awards of intervenor compensation with respect to its request filed on November 26, 2001.

2. TURN should be awarded \$ 17,340.33 for its contributions to D.01-09-063.

3. Pursuant to Rule 77(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.

4. This order should be effective today so that TURN may be compensated without undue delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$17,340.33 as set forth herein for substantial contributions to Decision (D.) 01-09-063.
2. The award shall be paid from the intervenor compensation program fund, as described in D.00-01-020.

3. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release G.13, with interest beginning on the 75th day after the filing of TURN's compensation claim, and continuing until the full payment has been made.

This order is effective today.

Dated April 4, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners